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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/508,769	09/22/2004	Koutarou Matsu	NIWA	7902
7590	01/31/2006		EXAMINER	
James C Wray Suite 300 1493 Chain Bridge Road McLean, VA 22101			JOHNSON, JONATHAN J	
			ART UNIT	PAPER NUMBER
			1725	

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/508,769	MATSU, KOUTAROU	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jonathan Johnson	1725	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-11 is/are pending in the application.
  - 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) Claim(s) 1 is/are allowed.
- 6) Claim(s) 3-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1,3-11 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Election/Restrictions***

Newly submitted claim 11 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: In the instant case the product can be made using a brazing film instead of a brazing paste, which would require a search in class 427/470. This search is not required for the method claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 11 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1 and 2-10 are drawn to method of making a heat exchanger, classified in class 228, subclass 183.
- II. Claim 11 is drawn to a titanium plate heat exchanger, classified in class 428, subclass various.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the

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instant case the product can be made using a brazing film instead of a brazing paste, which would require a search in class 427/470. This search is not required for the method claims.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 requires the braze alloy to contain nickel, however claim 7 fails to further limit claim 6 as claim 7 allows for 0 wt% nickel.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3-6, 8-10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of US 6,149,051 (Vollmer). AAPA teaches paths of a first fluid and flow paths of a second fluid alternately arranged such that heat can be exchanged

between the two fluids (paragraph 2), said production method for forming said flow paths by connecting a titanium-made flat container having an inlet of one of the fluids formed on one end and an outlet of the fluid formed on the other end to an offset-type titanium plate fin accommodated in said flat container and connected to the inner side of said container via top ends of concave strips of said titanium plate fin so as to form a plane to plane connection (paragraphs 2-5), comprising steps of: coating a brazing paste over positions to be connected of said constituting members by using a paste supply in an vacuum and/or inert gas atmosphere. (paragraphs 2-7). Vollmer teaches a brazing paste is prepared by atomizing an alloy comprising a Ti--Zr type brazing solder, heating and having brazing temperature under 880.degree. C. to produce the structure (col. 7 and 8), containing 20 to 40 wt. % of titanium and 20 to 40 wt. % of zirconium so as to obtain a powdered alloy, which is mixed with a neutral binder so that said paste is prepared; and heating said brazing solder coated constituting members under 880.degree. C (abstract and col. 5. l. 35 to col. 6, l. 15). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the braze material process of AAPA to utilize the braze material of Vollmer in order to provide a braze material that requires less temperature to braze and is more economical to formulate (see Vollmer col. 3, ll. 40-50)

***Allowable Subject Matter***

Claim 1 is allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues nothing "in the reference even remotely hints at a braze material paste formed with a binder." The examiner disagrees. Vollmer teaches applying a binder to the base material (col. 5, ll. 15-20) and subsequently placing the braze mixture on the binder (col. 5, ll. 15-60). During patent examination, the pending claims must be "given the broadest reasonable interpretation." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). In applying the Prater test by giving the claims its broadest reasonable interpretation, it is the examiner's position that by placing the braze mixture onto the binder, the braze mixture is mixed into the and results in the formation of a brazing paste. The examiner notes that allwords.com defines "mixing" as "to put things together."

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., heating the braze paste under 880 C throughout the entire brazing process) are not recited in the rejected

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claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is the examiner's position Vollmer's heating to 760 C and ramping the heat up to 900 C meets the claim 3 limitation as the heating, albeit for a short time, helped to braze the brazing paste (compare applicant's brazing paste with Vollmer's).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Johnson whose telephone number is 571-272-1177. The examiner can normally be reached on M-Th 7:30 AM-5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jonathan Johnson  
Primary Examiner  
Art Unit 1725

jj